

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

TEXAS, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Civil Action No. 4:18-cv-00167-O

**JOINT MOTION FOR ENTRY OF BRIEFING
SCHEDULE AND TO EXTEND TIME AND PAGE LIMITS**

The parties jointly move for entry of a briefing schedule and to extend deadlines and page limits otherwise applicable under the federal and local rules, and state as follows:

1. In this case, Plaintiffs challenge the constitutionality of 26 U.S.C. § 5000A(a), which was enacted in 2010 as part of the Affordable Care Act. They allege that an amendment to 26 U.S.C. § 5000A enacted in the Tax Cuts and Jobs Act of 2017 has rendered that provision unconstitutional. They further allege that the provision cannot be severed from the remainder of the Affordable Care Act, which they ask the Court to invalidate in its entirety, along with all regulations that have been promulgated thereunder.

2. The complaint was filed on February 28, 2018, and service was completed on March 7, 2018. *See* ECF Nos. 1, 10. Plaintiffs intend to file an amended complaint on April 23, 2018, and Defendants will consent to that filing. *See* Fed. R. Civ. P. 15(a)(2).

3. Plaintiffs represent that they intend to move for a preliminary injunction on or about April 26, 2018.

4. Defendants represent that they seek additional time to file a coordinated response to the amended complaint and to Plaintiffs' anticipated preliminary injunction motion. Plaintiffs seek the invalidation of a federal statute, and their complaint raises a number of different legal theories, including under Article I of the U.S. Constitution, the Fifth Amendment's Due Process Clause, the Tenth Amendment, and the Administrative Procedure Act. Defendants' response will require close coordination among several federal agencies, including the Department of Justice, the Department of Health and Human Services, the Department of the Treasury, and the Internal Revenue Service. In addition, counsel at the Department of Justice are currently occupied with other pressing litigation matters, which will prevent them from preparing a considered response to the amended complaint by the default deadline.

5. The parties submit that, under the circumstances, there is good cause to extend the deadlines otherwise applicable under the federal and local rules, and respectfully propose the following briefing schedule:

- Plaintiffs' motion for a preliminary injunction shall be filed by April 26, 2018
- Defendants' response to Plaintiffs' preliminary injunction motion and response to the amended complaint shall be filed by June 15, 2018
- Plaintiffs' reply in support of their preliminary injunction motion and opposition to any motion Defendants file in response to the amended complaint shall be filed by July 16, 2018
- Any reply by Defendants in support of a motion filed in response to the amended complaint shall be filed by August 9, 2018

6. No party has previously sought an extension of time in this case, and granting this request would not affect any other deadlines.

7. The parties also respectfully seek leave to file briefs exceeding the default page limits prescribed by Local Rule 7.2(c). In view of the number and nature of the claims alleged in

the complaint, Plaintiffs request leave to file a 50-page brief in support of their motion for a preliminary injunction, and Defendants request leave to file a responsive brief of the same length.

WHEREFORE, the parties respectfully request that the Court enter the attached proposed briefing schedule.

Dated: April 23, 2018

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY D. STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

/s/ Darren McCarty
DARREN McCARTY
Special Counsel for Civil Litigation
Texas Bar No. 24007631
darren.mccarty@oag.texas.gov

AUSTIN R. NIMOCKS
Special Counsel for Civil Litigation
Attorney General of Texas
P.O. Box 12548, Mail Code 001
Austin, Texas 78711-2548
Tel: 512-936-1414

Counsel for Plaintiffs

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

JENNIFER D. RICKETTS
Director

JOEL McELVAIN
Assistant Director

/s/ Eric Beckenhauer
ERIC B. BECKENHAUER
Cal. Bar No. 237526
REBECCA KOPPLIN
Cal. Bar No. 313970
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
Washington, DC 20530
(202) 514-3338
(202) 616-8470 (fax)
eric.beckenhauer@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that on April 23, 2018, I filed the foregoing document with the Clerk of Court via the CM/ECF system, causing it to be served electronically on Plaintiffs' counsel of record.

/s/ Eric Beckenhauer
ERIC B. BECKENHAUER